



September 21, 2000

Ms. Tina Plummer
Open Records Coordinator
Texas Department of Mental Health & Mental Retardation
P. O. Box 12668
Austin, Texas 78711-2668

OR2000-3660

Dear Ms. Plummer:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 139284.

The Texas Department of Mental Health and Mental Retardation (the "department") received a request for 14 items of information regarding the department's care of a named client, various information pertaining to other department clients, and information about Hill County Support Services. You argue that the information responsive to items 5, 6, and 12 of the request are excepted from public disclosure under sections 552.101 and 552.103 of the Government Code.¹ In these items of the request, the requestor specifically asks for the following:

5. The identity of all clients within the MHMR "respite" or "foster" care programs who have alleged sexual assaults associated with such care.
6. All statistics and reports relating to all clients within the MHMR "respite" or "foster" care programs who have alleged sexual assaults associated with such care.

¹You neither discuss nor raise exceptions regarding the disclosure of the information responsive to the remaining requested items. In addition, you have not submitted the responsive documents for our review. Thus, we must assume that the remaining responsive information has been released to the requestor. If you have not yet released this information, you must do so at this time. See Gov't Code §§ 552.301, 552.302.

12. Any documents that identify by name, address or phone number the parents or guardians of all Hill Country Support Services, Inc. clients for the last five years.

You have submitted exhibit A, which you state is responsive to item number 12, and exhibit B which you assert is a representative sample of the information responsive to item numbers 5 and 6.² We have considered the exceptions you claim and reviewed the submitted information.

You contend that exhibit A is excepted from public disclosure pursuant to Government Code section 552.101 and common law privacy.

Section 552.101 excepts from required public disclosure "information that is confidential by law, either constitutional, statutory, or by judicial decision." Under common law privacy, private facts about an individual are excepted from disclosure. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). Information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Additionally, this office has found that information regarding some kinds of medical information or information indicating disabilities or specific illnesses is also excepted from required public disclosure under common law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). We agree that the marked information in exhibit A must be withheld as information protected by common law privacy.

You argue exhibit B is excepted from public disclosure pursuant to Government Code section 552.101 in conjunction with section 48.101 of the Human Resources Code. You explain that the information contained in exhibit B consists of Department of Protective and Regulatory Services ("DPRS") Abuse and Neglect investigation documents. Section 48.101 pertains to DPRS investigations and states in pertinent part:

²We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(a) The following information is confidential and not subject to disclosure under Chapter 552, Government Code:

(1) a report of abuse, neglect, or exploitation made under this chapter;

(2) the identity of the person making the report; and

(3) except as provided by this section, all files, reports, records, communications, and working papers used or developed in an investigation made under this chapter or in providing services as a result of an investigation.

(b) Confidential information may be disclosed only for a purpose consistent with this chapter and as provided by department or investigating state agency rule and applicable federal law.

...

(d) The department or investigating state agency by rule shall provide for the release on request to a person who is the subject of a report of abuse, neglect, or exploitation or to that person's legal representative of otherwise confidential information relating to that report. The department or investigating state agency shall edit the information before release to protect the confidentiality of information relating to the reporter's identity and to protect any other individual whose safety or welfare may be endangered by disclosure.

We believe you have demonstrated that the information in exhibit B is confidential pursuant to section 48.101(a) of the Human Resources Code. Consequently, the information must not be disclosed to the public, except for a purpose consistent with chapter 48 of the Human Resources Code, or as provided by department rule or federal law. *See* Hum. Res. Code § 48.101(b). *See also* § 48.101(c), (e), (f) (permitting release of confidential information in certain circumstances); 25 T.A.C. 417.511 (permitting release of investigative report of abuse, neglect, and exploitation in Texas Department of Mental Health and Mental Retardation facilities to the alleged victim or guardian). You explain that, because exhibit B is an investigative report pertaining to the requestor's client, that exhibit has been released the requestor. We note, however, that you have submitted exhibit B as a representative sample. As you have not indicated an applicable rule that would permit release to this requestor, and because no other release provision appears to apply in this instance, we

conclude that any other information that is substantially similar to exhibit B which does not pertain to the alleged victim named in exhibit B must be withheld from the requestor.

In summary, the marked information in exhibit A must be withheld under common law privacy. Information substantially similar to exhibit B must be withheld in its entirety pursuant to section 48.101 of the Human Resources Code except as provided above.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

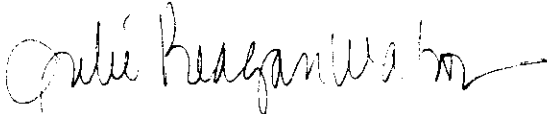
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or

complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, appearing to read "Julie Reagan Watson", followed by a horizontal line.

Julie Reagan Watson
Assistant Attorney General
Open Records Division

JRW/pr

Ref: ID# 139284

Encl. Marked documents

cc: Mr. Bob Richardson
812 San Antonio Street, Suite 300
Austin, Texas 78701
(w/o enclosures)